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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,407	10/12/1999	TERRY L. DELOVITCH	087300-00040	5078
20350	7590	11/20/2003		
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER ROARK, JESSICA H	
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/341,407

Applicant(s)

DELOVITCH, TERRY L.

Examiner

Jessica H. Roark

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 13 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 4-6 and 9.

Claim(s) withdrawn from consideration: _____

PHILLIP GAMBEL
PHILLIP GAMBEL, PH.D
PRIMARY EXAMINER
REH CEN 12/16/00
11/19/03

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s):
the previous rejection of claim 4 under 35 USC 11, second paragraph .

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant's arguments regarding the rejection of claims 1, 4-6 and 9 under 35 USC 103(a) as being obvious over the combination of Rabinovitch and Lenschow et al in view of either King et al. or Webb et al. are acknowledged.

Applicant argues in conjunction with newly submitted literature that the ordinary artisan was confronted with a confusing picture regarding the role of CD28 in IDDM. Applicant again argues that the Examiner has drawn improper inferences from the Lenschow et al. '96 reference regarding the implications of Lenschow et al.'s findings, particularly when viewed against the background literature. Applicant also argues that the ordinary artisan would not have been motivated to combine the possible TH2 stimulation approach of Rabinovitch with a CD28 agonist because other studies have shown that CD28 antagonists (rather than agonists) inhibit IDDM.

The Examiner acknowledges that multiple groups, including Lenschow et al., had shown that inhibitors of the CD28/B7 pathway could inhibit development of IDDM. Lenschow et al. '96 also acknowledge that their findings are distinct from their own work and that of others regarding antagonists of the CD28/By pathway. It is this appreciation of the prior literature that leads Lenschow et al. to not the importance of the timing of intervention. Thus the Examiner has not disregarded the body of literature regarding CD28/B7 antagonists, but rather views those teachings in the context of the results of Lenschow et al. '96. It is also again noted that the rejection of record relies upon a combination of references that addresses motivation drawn from what was known in the art regarding TH2 T cells in IDDM.

The Examiner maintains for the reasons of record that this combination of references would have provided motivation and a reasonable expectation of success with respect to the instantly claimed method when viewed from the perspective of the ordinary artisan at the time the invention was made and with knowledge of the complex body of literature regarding the role of the CD28 pathway in IDDM.